

**Regulatory Flexibility Threshold Analysis:  
Proposed Regulations Implementing the  
Final General Management Plan Amendment/  
Environmental Impact Statement for  
Dry Tortugas National Park**

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, requires Federal agencies to analyze impacts of regulatory actions on small entities (businesses, nonprofit organizations, and governments), and to consider alternatives that minimize such impacts while achieving regulatory objectives. Agencies must first conduct a threshold analysis to determine whether regulatory actions are expected to have a significant economic impact on a substantial number of small entities. If the threshold analysis indicates a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be produced and made available for public review and comment along with the proposed regulatory action. A final regulatory flexibility analysis that considers public comments must then be produced and made publicly available with the final regulatory action. Agencies must publish a certification of no significant impact on a substantial number of small entities if the threshold analysis does not indicate such impacts.

This threshold analysis examines impacts of the proposed regulations implementing the Final General Management Plan Amendment/Environmental Impact Statement (*FGMPA/EIS*) on small entities. The factual basis developed in this analysis indicates no significant economic impact on a substantial number of small entities resulting from the proposed action. Nevertheless, the National Park Service (NPS) solicits public comment and data that are relevant to the assessment of these impacts.

## **Background**

The purpose of this proposed action is to implement the *FGMPA/EIS*, which establishes the management framework for decision making in the park for the next 15 to 20 years. The park has been operating under the General Management Plan/Development Concept Plan/Environmental Assessment that was prepared in 1983. Although much of the 1983 plan is still applicable, NPS planning guidance has changed and the older plan does not address current issues. The older plan needs amending to provide overall guidance for the future use of resources and facilities; to clarify research and resource management needs, priorities, and strategies; and to address changing levels of park visitation and use. The *FGMPA/EIS* would replace the 1983 plan under the proposed action.

The specific issues addressed in the *FGMPA/EIS* include protection of near-pristine resources such as coral reefs and sea grass beds, the protection of submerged cultural resources, the management direction of commercial services to provide transportation and assistance in educating visitors, and the determination of appropriate

levels and types of visitor use. Establishing appropriate levels of visitor use is especially important given the large increase in visitation the park has experienced since the 1983 plan was implemented. From 1983 to 2000, visitation at the park increased from 11,004 to 83,704 recreational visitors annually (National Park Service 2005a). This increase, primarily due to the advent of high-speed ferries, created serious concerns about potential threats to park resources, facilities, and visitor experiences.<sup>1</sup> The resources and infrastructure at the park cannot sustain such growth rates and still provide visitors a high-quality experience. Additionally, adverse impacts from commercial and recreational fishing have been documented. Research conducted from the 1990s through 2001 found that coral reef fish stocks in the Tortugas area have been significantly depleted, threatening the integrity and natural dynamics of the ecosystem. For example, the average size of black grouper is now 40 percent of what it was around 1930, and the spawning stock is now less than 10 percent of its historical un-fished maximum (Ault et al. 2002).

## **Economic Impacts**

The cost-benefit analysis of this proposed action (National Park Service 2005b) analyzed potential impacts on visitors and the providers of commercial services. That analysis concluded that none of the action alternatives (B, C, D, and E) would impose significant impacts on visitors relative to baseline conditions (Alternative A) in the near future. This conclusion was based on the fact that recreational visitation in the park has remained relatively stable in recent years, and the fact that average recreational visitation has remained below the proposed carrying capacity. NPS did not have sufficient information on future demand conditions to predict visitation trends over the expected 15 to 20-year life of the FGMPA/EIS.

NPS also concluded that none of the action alternatives would impose significant impacts on the total quantity of commercial services offered in the park. This conclusion was based on the fact that commercial services would continue to be available to transport visitors to the park and to provide guide/interpretive/educational services under each of the action alternatives. Since the proposed visitor carrying capacity was not expected to restrict visitation in the near future, the total number of commercial services demanded would likely remain unchanged.<sup>2</sup> Indeed, the role of commercial operators would be significantly expanded for day use activities under the proposed action (intra-park transportation and tours). However, the composition of the commercial services offered and demanded would change to be consistent with the respective management zone allocation for each alternative. NPS did not have sufficient information to be able to estimate the impacts associated with changes in the composition of the commercial services offered among the different action alternatives, or to predict visitation trends over the expected 15 to 20-year life of the FGMPA/EIS.

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<sup>1</sup> In May 1999, the park established a moratorium on new or expanded commercial services to stabilize visitation until the Final General Management Plan Amendment could be implemented.

<sup>2</sup> While NPS believes that the total quantity of commercial services provided would remain unchanged, the distribution of those services among the providers of commercial services would likely change.

NPS acknowledges that concession contracting under the proposed action (Alternative C) would eliminate one or both of the current ferry operators. However, those impacts would be directly attributable to the subsequent concession contracting process and not the proposed regulatory action per se.

Given these conclusions, NPS believes none of the action alternatives, including the proposed action, would impose significant economics impacts.

### **Number of Small Entities**

Currently, 31 operators hold incidental business permits to provide commercial services within the park.<sup>3</sup> For purposes of this analysis, all 31 operators are considered small businesses.<sup>4</sup> These services include guide fishing and diving, transportation, sailing, and bird watching. Commercial services would continue to be offered under each of the action alternatives. NPS acknowledges that concession contracting under the proposed action (Alternative C) would eliminate one or both of the current ferry operators. However, NPS does not believe that two businesses constitute a substantial number of small entities in the relevant economy. NPS is not aware of any other small entity that would be affected by the proposed action. Therefore, a substantial number of small entities will not be affected by this proposed action.

### **Conclusion**

The Regulatory Flexibility Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which describes the impacts of the proposed regulatory action on small entities. However, if the proposed action is not expected to have a significant economic impact on a substantial number of small entities, this statute allows agencies to so certify in lieu of preparing the initial regulatory flexibility analysis.

This regulatory flexibility threshold analysis considered potential impacts to small entities associated with the proposed regulations implementing the Final General Management Plan Amendment/Environmental Impact Statement. This analysis concluded that none of the action alternatives, including the proposed action, would impose significant impacts on a substantial number of small entities. Therefore, given the factual basis developed in this threshold analysis, NPS certifies that this proposed

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<sup>3</sup> In 1999, 55 commercial use authorization permits were issued to two ferry operators, four seaplane operators, and 40 smaller boats for sailing, fishing, scuba diving, snorkeling, and bird watching. The number of permit holders subsequently declined to 31 in 2001 through attrition and enforcement of the 1999 moratorium on new or expanded commercial services. Commercial use authorizations are currently called incidental business permits.

<sup>4</sup> The Office of Advocacy defines a small business for research purposes as an independent business having fewer than 500 employees (U.S. Small Business Administration Office of Advocacy, May 2003).

regulatory action will not have a significant economic impact on a substantial number of small entities.

## References

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